magnitude to qualify for lower advisory fees than those to be charged by the Fund. These limited partners will be given the opportunity to withdraw from the Partnership prior to the Exchange. Applicants expect that other Fund expenses will be relatively higher than Partnership expenses. This is primarily because of the increased operating costs of a registered investment company and compliance with additional regulatory requirements. Through the end of calendar 1996, however, the Adviser will limit annual Fund expenses with the intention of capping Fund expense ratios at levels which would have been incurred during 1996 by the Partnership.

9. Prior to the Exchange, certain limited partners may withdraw from the Partnership and participate in a new limited partnership with similar investment objectives. The new limited partnership will not be registered under the Act in reliance on section 3(c)(1) thereof, and the new partnership interests will not be registered under the Securities Act of 1933 in reliance on section 4(2) thereof.

10. The Fund's board of directors and TAMCO have considered whether the Exchange will be in the best interests of the Company and the Partnership, respectively. All of the members of the Fund's board and TAMCO have approved the Exchange and have concluded that: (a) The Exchange is desirable as a business matter for both the Company and the Partnership; (b) the Exchange is in the best interests of the Company and the Partnership; (c) the Exchange is reasonable and fair, does not involve overreaching, and is consistent with the policies of the Act; (d) the Exchange is consistent with the policies of the Company and the Partnership; and (e) the interests of existing shareholders in the company and existing partners will not be diluted as a result of the Exchange. The Exchange will not effected until the Company has received a favorable opinion of counsel with respect to the tax consequences of the Exchange and the SEC has issued the requested order.

Applicants' Legal Analysis

1. Section 17(a) prohibits affiliated persons of a registered investment company, or affiliated persons of such persons, from selling to or purchasing from such company any security or other property. Section 2(a)(3) of the Act defines an ''affiliated person'' as, among other things, any person directly or indirectly controlling, controlled by, or under common control with another. The Partnership may be an affiliated person of an affiliated person of the Company because TAMCO is the general partner of the Partnership and because TAMCO and the Adviser are under common control. Thus, the proposed Exchange may be prohibited by section 17(a).

2. Section 17(b) of the Act permits the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that (a) the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of the registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. The Exchange will permit partners to pursue the same investment objectives and policies as shareholders of the Fund without sacrificing the pass-through tax features of the Partnership. In addition, shareholders of the Partnership. In addition, shareholders of the Fund will be able to purchase and redeem shares on each business day, as opposed to only once per month as is currently provided under the Partnership agreement. Shareholders of the Fund also will be able to shift investments among the eleven existing series of the Company at no charge. The Fund expects that operating as a registered investment company will help encourage net asset growth. For these reasons, among others, applicants believe that the proposed Exchange meets the section 17(b) standards.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–7190 Filed 3–22–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36985; File No. S7–24–89]

Joint Industry Plan; Solicitation of Comments on Amendment No. 9 to, and Order Granting Request To Extend Effectiveness of, Reporting Plan for Nasdaq/National Market Securities Traded on an Exchange on an Unlisted or Listed Basis, Submitted by the National Association of Securities Dealers, Inc., and the Boston, Chicago, and Philadelphia Stock Exchanges

March 18, 1996.

On March 15, 1996, the National Association of Securities Dealers, Inc., and the Boston, Chicago, and Philadelphia Stock Exchanges (collectively, ''Participants'')[1] submitted to the Commission proposed Amendment No. 9 to a joint transaction reporting plan (''Plan'') for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis.[2] Amendment No. 9 would provide for cost allocation and revenue sharing under the Plan among the Participants. By letter attached to the filing, the National Association of Securities Dealers, on behalf of all the Participants, also requests that the Commission extend the effectiveness of the pilot approval of the Plan for an additional six months.[3] This notice and order solicits comment on proposed Amendment No. 9 to the Plan and on certain substantive matters identified below, and extends the effectiveness of the Plan through September 15, 1996.

I. Background

The Commission originally approved the Plan on June 26, 1990.[4] The Plan governs the collection, consolidation, and dissemination of quotation and transaction information for Nasdaq/National Market securities listed on an exchange or traded on an exchange pursuant to UTP. The Commission has extended the effectiveness of the Plan eight times since then to allow the Participants to trade pursuant to the Plan while they finalize their

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[1] The signatories to the Plan, i.e., the National Association of Securities Dealers, Inc. (''NASD''), the Chicago Stock Exchange, Inc. (''Chx'') (previously, the Midwest Stock Exchange, Inc.), Philadelphia Stock Exchange, Inc. (''Phlx''), and the Boston Stock Exchange, Inc. (''BSE''), are the ''Participants.'' The BSE, however, joined the Plan as a ''Limited Participant,'' and reports quotation information and transaction reports only in Nasdaq/National Market (previously referred to as ''Nasdaq/NMS'') securities listed on the BSE. Originally, the American Stock Exchange, Inc., was a Participant to the Plan, but did not trade securities pursuant to the Plan, and withdrew from participation in the Plan in August 1994.

[2] Section 12 of the Act generally requires an exchange to trade only those securities that the exchange lists, except that Section 12(f) of the Act permits unlisted trading privileges (''UTP'') under certain circumstances. For example, Section 12(f), among other things, permits exchanges to trade certain securities that are traded over-the-counter (''OTC/UTP''), but only pursuant to a Commission order or rule. The present order fulfills this Section 12(f) requirement. For a more complete discussion of this Section 12(f) requirement, *see* November 1995 Extension Order, *infra* note 5, at n. 2.

[3] *See* letter from Robert E. Aber, Vice President, General Counsel and Secretary, Nasdaq, to Mr. Jonathan G. Katz, Secretary, Commission, dated March 15, 1996.

[4] *See* Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (''1990 Approval Order''). For a detailed discussion of the history of UTP in OTC securities, and the events that led to the present plan and pilot program, *see* 1994 Extension Order, *infra* note 5.

negotiations for revenue sharing under the Plan.[5]

As originally approved by the Commission, the Plan required the Participants to complete their negotiations regarding revenue sharing during the one-year pilot period. Recently, the Participants concluded those negotiations, as evidenced by the present filing. The substance of the agreement, as described by the NASD in its March 15 letter,[6] is below.

II. Description of the Proposal

A. Proposed Revenue Sharing Agreement

Under the proposed Revenue Sharing Plan, Exchange Participants will receive annual payments in quarterly installments out of total net distributable operating revenue based on their percentage of total Nasdaq volume,[7] subject to certain specified minimum and maximum payments for an initial period of four-and-one-half years (''buy-in period''). Thereafter, once the ''buy-in'' period elapses with respect to a particular Exchange Participant, that exchange will receive annual payments in quarterly installments out of total net distributable operating revenue proportional to its percentage of total Nasdaq volume, without regard to any minimum or maximum payment amounts. Plan Participants would not be eligible to receive revenue under the Plan until they have established an automated interface with Nasdaq for the transmission of quotations and transaction information. Once an Exchange Participant is eligible to receive revenue under the Revenue Sharing Plan, that Exchange Participant also will be eligible to receive revenue based on its volume for the preceding twelve-month period, up to the maximum payment amount discussed below.[8]

Specifically, the maximum payment amount for any Exchange Participant will be an amount based on total net distributable operating revenue under the Plan for 1995. This maximum payment amount figure will be calculated and furnished to all Exchange Participants by the NASD by April 30, 1996. Based on revenue calculations performed by the NASD in the last quarter of 1995, it is expected that the maximum payment amount will be somewhere in the range of $820,000 and $880,000, but this figure could be higher or lower depending on the eventual revenue for 1995. Over time, this maximum payment amount will be adjusted upward or downward depending on fluctuations in net operating revenue relative to revenue in 1995. The minimum payment amount for the Chx would be $250,000 and likewise would be adjusted upward or downward depending on fluctuations in net operating revenue relative to revenue in 1995. The minimum payment for other exchanges becoming eligible to receive revenue under the Plan would be set relative to the trading volume of the Exchange Participant with the highest trading volume among Exchange Participants during the year before the Participant became eligible to receive revenue under the Plan. The minimum payment amount to other Exchange Participants also would be adjusted annually in the same manner as that of the Chx. Accordingly, for a period of four-and-one-half years, if an Exchange Participant's share of distributable revenue is less than its minimum payment amount, it would receive the minimum payment amount; if its share is equal to or greater than its minimum payment amount but less than its maximum payment amount, it would receive that share of revenue; and, if its share is greater than the maximum payment amount, it would receive the maximum payment amount. The interim plan found in the proposal for the buy-in period also contains provisions for the pro rata diminution of the minimum payment amount in the event that an Exchange Participant becomes eligible or ineligible to receive revenue during a calendar year. After this initial buy-in period, an Exchange Participant would receive a relative proportion of net distributable operating revenue based on its trading volume.[9]

B. Extension of the Operation of the Plan and Certain Exemptive Relief

First, the Participants request that the Commission extend the operation of the Plan for an additional six months. The NASD, in its letter on behalf of all the Participants, states that the extension of the Plan will afford the Participants an opportunity collectively and cooperatively to address two outstanding issues identified by the Plan Participants and the Commission concerning the operation of the Plan. Specifically, the NASD states that the Plan Participants intend cooperatively to address and resolve: (1) Whether the best bid and offer calculation for the Nasdaq securities subject to the Plan should be based on a price/time/size algorithm (as currently is the case) or a price/size/time methodology; and (2) whether there is a need for an intermarket linkage for routing and executing orders in Nasdaq securities subject to the Plan and an accompanying trade-through rule.

Second, in conjunction with the Plan, on a temporary basis scheduled to expire on March 15, 1996, the Commission granted an exemption from Rule 11Ac1–2 under the Act regarding the calculated best bid and offer (''BBO''), and granted the BSE an exemption from the provision of Rule 11Aa3–1 under the Act that requires transaction reporting plans to include market identifiers for transaction reports and last sale data.

This order extends the operation of the Plan and the above exemptive relief through September 15, 1996. The Commission believes it is appropriate to grant these extensions so that the Participants may conclude their

[5] *See* Securities Exchange Act Release No. 34371 (July 13, 1994), 59 FR 37103 (''1994 Extension Order''). *See also* Securities Exchange Act Release No. 35221 (January 11, 1995), 60 FR 3886 (''January 1995 Extension Order''), Securities Exchange Act Release No. 36102 (August 14, 1995), 60 FR 43626 (''August 1995 Extension Order''), Securities Exchange Act Release No. 36226 (September 13, 1995), 60 FR 49029 (''September 1995 Extension Order''), Securities Exchange Act Release No. 36368 (October 13, 1995), 60 FR 54091 (''October 1995 Extension Order''), Securities Exchange Act No. 36481 (November 13, 1995), 60 FR 58119 (''November 1995 Extension Order''), Securities Exchange Act Release No. 36589 (December 13, 1995), 60 FR 65696 (''December 13, 1995 Extension Order''), Securities Exchange Act Release No. 36650 (December 28, 1995), 60 FR 358 (''December 28, 1995 Extension Order''), and Securities Exchange Act Release No. 36934 (March 6, 1996), 61 FR 10408 (''March 6, 1996 Extension Order'').

[6] *See supra* note 3.

[7] An Exchange Participant's percentage of total Nasdaq volume will be based on the average of that Exchange's proportion of total Nasdaq *trade* volume reported to Nasdaq and disseminated to securities information vendors, and total Nasdaq *share* volume reported to Nasdaq and disseminated to securities information vendors.

[8] Because the Chx is the only Exchange Participant that has implemented and maintained an automated interface with Nasdaq for the reporting of transaction and quotation information pursuant to the Plan, the Chx will receive a lump-sum payment of $444,525 payable thirty days after the effective date of the Revenue Sharing Plan. The Commission notes that this amount is based on the following payments for previous periods: (1) For the six-month period ending December 1993, $50,000; (2) for the one-year period ending December 1994, $100,000; and (3) for the period between January 1, 1995 and March 5, 1996, $294,525. For the period March 6 to December 31, 1996, the NASD is scheduled to pay the Chx a pro rata amount of its payment for 1996.

[9] The Commission notes that the NASD, in its letter attached to the present proposed amendment to the Plan, states its strong belief that Participants should address the fact that, absent an additional amendment to the Plan, Participants would have the right to receive revenue for late trade reports. The NASD ''believes it is improper to reward a market center for transmitting stale transactions that, at best, have questionable, if any, redeeming economic value to market participants and, at worse, are potentially disruptive to the marketplace.'' The NASD also notes the numerous benefits that it believes would be derived from limiting Participant's revenues to those associated with timely-reported transactions. *Supra* note 3.

negotiations concerning the above items, and so the Commission will have sufficient opportunity to review any comments it receives on the present notice. Finally, as with previous extensions of this pilot program, this extension will remain in effect only if the Plan continues in effect through that date pursuant to a Commission order.[10] In this regard, the Commission continues to believe that the above extension of exemptive relief is appropriate through September 15, 1996.

III. Comments on the Operation of the Plan

In the January 1995, August 1995, September 1995, October 1995, November 1995, December 13, 1995, December 28, 1995, and March 6, 1996 Extension Orders, the Commission solicited, among other things, comment on: (1) Whether the BBO calculation for the relevant securities should be based on price and time only (as currently is the case) or if the calculation should include size of the quoted bid or offer; and (2) whether there is a need for an intermarket linkage for order routing and execution and an accompanying trade-through rule. The Commission continues to solicit comment on these matters.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the Submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. All submissions should refer to File No. S7–24–89 and should be submitted by April 15, 1996.

[10] In the March 6 Extension Order, the Commission extended these exemptions through March 15, 1996. Pursuant to a request made by the NASD, this order further extends the effectiveness of the relevant exemptions through September 15, 1996. *See supra,* note 3.

V. Conclusion

The Commission finds that an extension of temporary approval of the operation of the Plan through September 15, 1996, is appropriate and in furtherance of Section 11A of the Act. The Commission finds further that extension of the exemptive relief through September 15, 1996, as described above, also is consistent with the Act and the Rules thereunder. Specifically, the Commission believes that these extensions should serve to provide the Participants with more time to conclude their review of the BBO calculation and make appropriate recommendations concerning the need for an intermarket linkage and/or a trade-through rule now that the Participants have agreed on revenue sharing. This, in turn, should further the objectives of the Act in general, and specifically those set forth in Sections 12(f) and 11A of the Act and in Rules 11Aa3–1 and 11Aa3–2 thereunder.

It is therefore ordered, pursuant to Sections 12(f) and 11A of the Act and (c)(2) of Rule 11Aa3–2 thereunder, that the Participants' request to extend the effectiveness of the Joint Transaction Reporting Plan for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis and certain exemptive relief through September 15, 1996, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(29).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–7153 Filed 3–22–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36983; File No. SR–OCC–96–01]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Concerning Choice of Law Provisions in Connection With Amendments to Articles 8 and 9 of the Uniform Commercial Code

March 18, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 16, 1996, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments from interested persons.

[1] 15 U.S.C. 78s(b)(1) (1988).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will change the choice of law provisions and other provisions in OCC's by-laws and rules in connection with Illinois' adoption of the 1994 amendments to Articles 8 and 9 of the Uniform Commercial Code (''UCC'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In 1994, The American Law Institute and the National Conference of Commissioners on Uniform State Laws promulgated amendments to Articles 8 and 9 of the UCC (''1994 amendments''). To a significant degree, the 1994 amendments were adopted in response to the views of the Commission and others that the shortcomings in the provisions of the 1977 version of Articles 8 and 9 of the UCC contributed to the liquidity problems associated with the October 1987 stock market decline. The 1994 amendments were intended to reduce legal uncertainty and to facilitate the transfer of ownership of and creation of security interests in securities as well as other financial assets and investment property, including futures and futures options, through a set of rules designed to apply to the modern securities and futures holding systems.

OCC participated in certain aspects of the drafting process and believes that revised Articles 8 and 9 provide a framework of rules more appropriate to the special characteristics of OCC-cleared securities and for the holding of securities deposited with OCC for margin and for clearing fund purposes. OCC also believes the creation and

[2] The Commission has modified the text of the summaries prepared by OCC.